

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION**

<b>CHRISTINA MILLER, Administratrix of the</b>	)	
<b>Estate of TRAVIS L. LANDIS HOTT,</b>	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 5:02CV00102</b>
	)	
<b>v.</b>	)	<b><u>MEMORANDUM OPINION</u></b>
	)	
<b>ROBERT M. LUTTRELL, SR., et al.,</b>	)	<b>By: Samuel G. Wilson</b>
	)	<b>United States District Judge</b>
<b>Defendants</b>	)	
	)	

This is a diversity action filed by Christina Miller, individually and on behalf of her son, Travis Hott, alleging wrongful death arising from the negligent actions of the defendants, Robert M. Luttrell and his son, Mitch Luttrell.<sup>1</sup> Miller is a resident of West Virginia and both defendants are residents of Virginia. After Mitch Luttrell failed to respond, Miller moved for default judgment, which the court granted on June 18, 2003, reserving the question of damages. The matter came before the court for trial on January 21, 2005, during which the court heard testimony concerning the alleged liability of Robert M. Luttrell, as well as testimony on the question of damages. After hearing all the evidence, the court concluded that Miller did not prove by a preponderance of the evidence that Luttrell had failed to exercise reasonable care in the storage of his firearm and that Luttrell was, accordingly, not liable for the wrongful death of Travis Hott.

**I.**

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<sup>1</sup>The Luttrell family refers to Robert M. Luttrell, Jr. as “Mitch.” To avoid confusion of the defendants, the court will do the same. The court’s reference to “Luttrell” refers only to Robert M. Luttrell, Sr.

This case arose from the tragic shooting death of thirteen-year-old Travis Hott, a close friend of the Luttrell family. On the night of September 14, 2001, Hott was watching television with seventeen-year-old Mitch Luttrell. According to his testimony, Robert Luttrell went to bed around 8:00 or 9:00 p.m., but was shortly awakened by a loud bang. He discovered his son holding Travis Hott, who was bleeding from a gunshot wound in his neck, and called 911. An ambulance transported Hott to the hospital, where he died.

The parties have stipulated that Hott was shot and killed at Luttrell's residence with a gun owned by Luttrell. Mitch Luttrell pled guilty in state court to charges of involuntary manslaughter and is currently serving a prison sentence. Robert Luttrell testified at trial that he kept the gun in a plastic case with a padlock, in a locked gun cabinet, in a locked closet in a spare room that usually remained locked. He kept the keys to the gun safe in a cabinet in the kitchen. Luttrell testified that, although Mitch knew where he kept the keys, Mitch was under strict instructions not to unlock the safe or touch the firearms unless Robert Luttrell was present. He also stated that he was unaware of any occasion on which Mitch had ever violated this rule, and that Mitch had asked for permission on previous occasions to use the firearms, but that Luttrell had not permitted it. Luttrell testified that he had no past disciplinary problems with his son, and that Mitch did not ask permission to use any of the firearms on the evening of September 14.

## II.

Under Virginia law, a parent is not vicariously liable for his child's torts. Bell v. Hudgins, 352 S.E.2d 332, 333 (Virginia 1987). The court therefore cannot impose liability on Luttrell for the wrongful death of Travis Hott solely because his son shot and killed Hott. Nor is the issue in this case

one of negligent entrustment, because there is no evidence that Luttrell entrusted Mitch with the firearm. To establish liability, Miller would have to show that Luttrell, the owner of the gun, negligently failed to deny his son access to the firearm. See, e.g., Hughes v. Brown, 36 Va. Cir. 444, 448 (Circuit Court of Stafford County, 1995). Because the court finds that Luttrell took reasonable precautions, under all the circumstances, to deny Mitch access to the firearm, it enters judgment for Luttrell.

Here, the court credits Luttrell's testimony that he had forbidden Mitch to use the firearms stored in the gun cabinet outside of his presence and that he stored the firearm in a padlocked case in a locked safe. While Mitch had access to the gun cabinet keys, kept in the kitchen, there was no evidence that Mitch had ever violated his father's mandate, or that he had a history of violence or misconduct. Luttrell is not an insurer of the safety of visitors to his home and the court finds that maintaining a firearm in a locked gun cabinet, in a locked closet, in a locked spare room, is reasonable. The court finds that Luttrell exercised reasonable care under the circumstances, and accordingly grants judgment in his favor.

### **III.**

For the reasons stated, the court grants judgment in favor of Robert M. Luttrell, Sr. and against Christina Miller.

The court has already entered default judgment in favor of Christina Miller and against Mitch Luttrell. The evidence presented at trial supports recovery for "sorrow, mental anguish, and solace," under Virginia Code § 8.01-52, as well as for hospital and funeral expenses. Travis Hott's mother, Christina Miller, and his sister, Cindy Hott, both offered poignant testimony concerning the loss to their family occasioned by Hott's death. Miller also submitted evidence of hospital and funeral expenses,

which are reflected in the court's calculation of damages.

**ENTER:** This \_\_\_\_\_ day of March, 2005.

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UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION**

<b>CHRISTINA MILLER, Administratrix of the</b>	)	
<b>Estate of TRAVIS L. LANDIS HOTT,</b>	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 5:02CV00102</b>
	)	
<b>v.</b>	)	<b><u>FINAL ORDER</u></b>
	)	
<b>ROBERT M. LUTTRELL, SR., et al.,</b>	)	<b>By: Samuel G. Wilson</b>
	)	<b>United States District Judge</b>
<b>Defendants</b>	)	
	)	

In accordance with the court's findings at trial and in the Memorandum Opinion entered on this day, it is **ORDERED** and **ADJUDGED** that **JUDGMENT** is **ENTERED** in favor of defendant Robert M. Luttrell, Sr.

Pursuant to the Court's entry of default against defendant Robert M. Luttrell, Jr., it is further **ORDERED** and **ADJUDGED** that **JUDGMENT** is **ENTERED** against Robert M. Luttrell, Jr. in the amount of **TWO HUNDRED FIFTY EIGHT THOUSAND, THREE HUNDRED SIX DOLLARS (\$ 258,306.00)**, in accordance with Virginia Code § 8.01-52, as damages for the following:

(1) Sorrow, mental anguish, and solace: **TWO HUNDRED AND FIFTY THOUSAND**

**DOLLARS;**

(2) Expenses for the care, treatment, and hospitalization of the decedent incident to the injury resulting in death: **SIX HUNDRED THIRTY-FIVE DOLLARS;**

(3) Funeral expenses: **SEVEN THOUSAND SIX HUNDRED SEVENTY ONE DOLLARS.**

Pursuant to Virginia Code § 8.01-53(A)(ii), after distribution of hospital and funeral expenses under § 5.01-54, the remaining damages shall be distributed equally to the mother, father, and two sisters of Travis Hott.

**ENTER:** This \_\_\_\_\_ day of March, 2005.

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UNITED STATES DISTRICT JUDGE